IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5898 OF 1997

1. Shri Basawaraj Sheelwant Occ.Business, carrying on business at 274, Mahatma Gandhi Road, Pune -411 001

2. Shri Manish S. Shah, aged 38, Occ.Business, carrying on business at 13, Mahatma Gandhi Road, Pune 411001.

3. Shri Kalimbhoy Fazal, age 62 Occ.Business, residing at 20, Mahatma Gandhi Road, Pune - 411001;

4. Shri Feroze Chinwalla, age 42, Occ. business, carrying on business at 274, Mahatma Gandhi Road, Pune-411001. .. Petitioners.

Vs

1. The Cantonment Board of Pune, Golibar Maidan, Pune 411 001.

2. The Executive Officer, Pune Cantonment Board, Golibar Maidan, Pune 411 001.

3. Union of India. .. Respondents

Mr N.P.Deshpande, for the petitioners.
Mr K.J.Presswala i/b M/s Mulla & Mulla CB & C for respondent nos 1 and 2..
Mr Y.S.Bhate i/b Mr T.C.Kaushik, for respondent no.3.

CORAM : V.G.PALSHIKAR, Ag.C.J., &
D.B.BHOSALE,J.
DATE : 22.11.2005.
ORAL JUDGMENT: (Per D.B.Bhosale, J.)

1. A "pay and park" scheme, hereinafter referred to

as "the said scheme", introduced by respondent no.1 - the Cantonment Board of Pune, is impugned in the instant writ petition filed by the four businessmen, under Article 226 of the Constitution of India. The said scheme is for parking of vehicles on Mahatma Gandhi Road,Pune herein after referred to as "M.G.Road". Respondent no.1 is a statutory Board constituted under The Cantonment Act,1924 (for short "the said Act"). M.G. road vests in the respondent-Board which enjoys the right to control, protect and maintain the same as also to regulate the traffic thereon.

2. The petitioners are businessmen having their shops/show-rooms at the M.G.Road and they have been carrying on their business for last several years. The said scheme, which, according to the petitioners, affects them most, was introduced some time in 1997. The moment the petitioners came to know about the said scheme, they approached the respondent-Board and lodged their protest against its introduction and requested to cancel/withdraw the same. Since the respondent-Board did not drop the idea of implementing the said scheme and/or withdrew it, the petitioners have approached this Court by way of the instant petition.

3. The only submission advanced by the learned

counsel for the petitioners was that the respondent-Board has no power/authority to introduce and implement such scheme inasmuch as there is no specific provision in the said Act authorising/empowering the respondent-Board to levy fees for parking of vehicles on the said street. It was further submitted that a mere regulatory power conferred by bye-law 43 of the Pune Cantonment bye-laws made under sections 119 and 282 of the said Act does not include the power to levy fees for parking of vehicles in the said street inasmuch as the said scheme is illegal, without authority of law and the same is arbitrary and violative of the fundamental rights of the petitioners and the similarly placed citizens. In short, the said scheme is violative of Article 19(1)(g) of the Constitution of India. In support of this contention, a heavy reliance was placed on the judgment of this Court in **Municipal Corporation of Greater Bombay and Anr Vs. Noshir Shapurji Dhabhar and ors- 1990 Mh.L.J.1173**. On the other hand, Mr Presswala, learned counsel for the respondent-Board submitted that sub-section (4) of Section 282 of the said Act clearly empowers the Board to make bye-laws to provide for the regulation of any description of traffic in the streets and the enforcement of measures for the reduction of noise pollution caused thereby and the prohibition of any description of such traffic. In

pursuance of this power, according to Mr Presswala, the respondent - Board framed the bye-laws regarding the regulation and prohibition of traffic. Bye-law 43 empowers the respondent-Board to introduce and implement the said scheme. He further submitted that M.G. Road is one of the busy streets in the city of Pune and is supposed to be an attraction for the shoppers and that being so and considering the heavy crowd and traffic congestion the Board had no alternative but to introduce the said scheme. It was then submitted that the parking fee that has been charged from the vehicle owners is a part of the regulatory measure. He also placed reliance upon the Cantonment Land Administration Rules, 1937 and Rule 46 thereof in particular to contend that the respondent-Board is legally competent to levy fees for parking vehicles.

4. It is not disputed that Mahatma Gandhi Road is a stretch of about 2 kms with shops, showrooms, restaurants etc. on either side and is, therefore, one of the most crowded streets and an attraction for the shoppers in Pune. The respondent-Board, prior to introduction of the said scheme, had admittedly taken some measures by removing hawkers, clearing of pavements and by widening of the road with a view to reduce traffic congestion and to control indiscriminate parking

and misuse of the said street. It is not disputed that if the traffic on M.G.Road is not regulated, it is bound to cause nuisance and inconvenience to the pedestrians and vehicle owners and would naturally create air and sound pollution causing hardship to everyone there. Keeping that in view, it appears that the respondent-Board introduced the said scheme.

5. Section 282 of the said Act confers power on the respondent-Board to make bye-laws for all or any of the matters mentioned in clauses (1) to (41) in Section 282. Clause (4) of Section 282 of the said Act provides for the regulation of any description of traffic in the streets and the enforcement of measures for the reduction of noise caused thereby or the prohibition of any description of such traffic. The respondent-Board, in exercise of its power vested under the aforesaid provision, made the bye-laws, which have been approved and confirmed by the Governor-in-Council under sub-section (1) of Section 284, titled as Poona Cantonment Bye-laws. The said bye-laws were published in Bombay Government Gazette, Part-I dated 24th February,1927. The relevant, bye-law no.43 thereof reads as follows.

"43. No Riding or Driving Allowed in Streets or

> at times prohibited by the Board. No animal shall be ridden or drive and no vehicle shall be driven or kept standing on any street at a time or in a manner prohibited by public notice issued by the Board or by the District Superintendent of Police."

A plain reading of the aforesaid bye-law shows that it specifically empowers the respondent-Board to regulate the traffic by public notice issued by the Board or by the District Superintendent of Police. The respondent-Board in its reply affidavit has clearly stated that introduction and implementation of the said scheme is under the aforesaid provision and was so introduced by following due procedure contemplated under the said bye-laws. Besides the provisions of the aforesaid bye-law, the respondent-Board also has a power under Rule 46 of the Cantonment Land Administration Rules, 1937 to levy fees for parking on the streets vest in it. By this rule, the Board is empowered to maintain registers which shall be known as grants register (temporary licence) and register of fees for motor vehicles parking licences. It is well settled that the powers of statutory Boards, such as respondent no.1, are solely those which the legislature has laid down expressly or impliedly in the Act or Rules framed

thereunder. Such authority can legally do only what the statute permits, and what is not permitted is forbidden. This is the strict doctrine of ultra vires, and it applies in full force to most of the organisations of government. A statutory power will however, be construed as impliedly authorising everything which can fairly be regarded as incidental or consequential to the power itself and this doctrine is not to be applied narrowly. It is thus clear that the aforesaid provisions empower the respondent-Board to regulate traffic and standing of vehicles in the street and levy fee for parking which can fairly be regarded as incidental or consequential to the substantial power itself. In other words, the Board has power to levy fees for parking by introducing such pay and park scheme by developing well designated and demarcated car parking areas which are enclosed and in which parking would be allowed in a regulated manner so that there would be no blockage of cars parked and also to prohibit indisciplined parking elsewhere in the main street. Looking to rule 46 of the said rules and bye-law 43 made under section 282 of the said Act, by no stretch of imagination it could be said that the pay and park scheme introduced by the respondent-Board is illegal and violative of Article 19(1)(g) of the Constitution of India. The aforesaid provision clearly empowers the

respondent-Board to introduce and implement such scheme and, therefore, it is not liable to be quashed and set aside.

6. Mahatma Gandhi Road has very limited parking space and unless it is shared in a fair and reasonable manner amongst all vehicle owners needing to park their vehicles, it is bound to cause inconvenience to one and all as also air and sound pollution. The shop owners in the said street cannot claim as of right the parking space in the street in an unregulated manner which may deprive other vehicle owners visiting the street for whatsoever purpose. As a matter of fact, the scheme introduced by the respondent-Board is an effective method to prevent monopolistic use of parking space by few vehicle owners. The regulation of traffic and parking of vehicles in the street would undoubtedly reduce traffic jam and would provide sharing of parking space in a fair and reasonable manner. No one can claim parking space in the public streets as of right and park vehicle from morning till night. However, this does not mean that the shop owners such as the petitioners, cannot approach the concerned authority and claim some privileges since they require to use parking space all throughout. However, it is the prerogative of the concerned authority to take appropriate decision keeping

in view that the parking lots are not monopolised by a few persons alone. The concerned authority may, in a given case, reserve some parking space for the shop-keepers in the streets on appropriate conditions. But reservation on busy public street in any case should not be exceeded 25% and in such reserved area alone the shop-keepers be allowed to park their vehicles on concessional basis. As a matter of fact, persons, who require parking space every day from morning till night, should not occupy the parking lot/s made available for the vehicle owners who require to park their vehicles for short duration. In short, there cannot be permanent reservation of parking which can be claimed by anyone, much less the shop-keepers in the street. It may be noticed at this stage that the respondent-Board, while introducing the scheme, has given some concession to the shop-keepers of M.G.Road and their employees by levying fees for parking of their vehicles on monthly basis.

7. The judgment in **Municipal Corporation of Greater Bombay case** (supra) is of no avail to the petitioner. In that case, the Division Bench of this Court held the pay and park scheme ultra vires since there was no provision in the Bombay Municipal Corporation Act authorising levy of fees for parking of vehicles. It is common knowledge that after that judgment there was an

amendment by which such power was conferred on the Bombay Municipal Corporation and thereafter in the city of Mumbai at every nook and corner pay and park scheme has been introduced and is being implemented.

8. The menace of heavy traffic and traffic jam has become a common feature at all places irrespective of their size and population. In recent past population of vehicles has also increased drastically resulting in traffic congestion everywhere. It is more severe in cities, like Mumbai and Pune where the streets in such cities lined with shops, show-rooms, malls, restaurants on either sides are always crowded and congested. If the vehicular traffic in such cities is not regulated and no parking space is earmarked, congestion and misuse of public streets would increase and that would ultimately cause air and sound pollution besides inconvenience and hardships to one and all. The vehicle owners often park their vehicles at wrong places and some times indulge in double parking which result into obstruction to the heavy flow of traffic. It has become inevitable for local authorities as well as statutory bodies like respondent no.1 to regulate traffic by introducing and implementing a pay and park scheme as a part of public policy. It is common experience that pay and park schemes work in almost all big cities and they

serve the need of a large numbers of vehicle owners. The limited space made available in the parking lots, if not shared in a fair and reasonable manner among all, needing parking spaces, the parking would be monopolised by a few persons alone. If shop keepers like petitioners keep their vehicles in parking lots from morning till evening, the others, who need parking space for limited duration, would stand deprived of the use of a parking lot. The pay and park schemes at all places have worked effectively by which monopolistic use of a parking lot by few has been prevented. The levy of parking fee cannot be always construed as charges for the services rendered by the concerned authority, but it is also a fee for the permission by such authority to vehicle owners to make use of the public place for their personal use. It may be noticed at this stage that what has been challenged in the instant petition is not the scheme but the authority in law or the competence to introduce and implement such scheme. Since we have held that the respondent-Board has power to frame and implement the said scheme the writ petition must fail and is dismissed as such. No cost.

(V.G.Palshikar,Ag.C.J.)

(D.B.Bhosale, J.)

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.5898 OF 1997

Date of Judgment:

22.11.2005

For approval and signature

THE HON'BLE AG.CHIEF JUSTICE V.G.PALSHIKAR.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?